

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

v.

BENEDICTO GALVEZ-GOMEZ,

Defendant/Petitioner.

Criminal Case No. 18-cr-20035
Civil Action No. 18-cv-13955

Paul D. Borman
United States District Judge

Anthony P. Patti
United States Magistrate Judge

ORDER ADOPTING REPORT AND RECOMMENDATION AND DENYING
DEFENDANT/PETITIONER'S MOTION BROUGHT PURSUANT TO 28
U.S.C. §2255

On March 31, 2020, Magistrate Judge Anthony P. Patti issued a Report & Recommendation (ECF #46) in which he recommended that the Defendant's Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. §2255 (ECF #35) be DENIED.

In the Report and Recommendation, the parties were advised that any objections must be filed within fourteen days of service of a copy as provided for in 28 U.S.C. 636(b)(1) and E.D. Mich. LR 72.1(d)(2) and that failure to file specific objections constitutes a waiver of any further right of appeal. No objections were filed.

When a district judge enters a final order which is adverse to a defendant in a § 2255 action, it must also issue or deny a certificate of appealability. See Rule 11 of the Rules Governing Section 2255 Proceedings; see also 28 U.S.C. §2253(c)(1)(B) (prohibiting defendant from appealing final order in § 2255 proceeding unless court issues certificate of appealability); Fed. R. App. P. 22(b)(same). A certificate of appealability may be issued only if the defendant has “made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). In order to satisfy this burden, the defendant must establish “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Thus, a petitioner - such as Galvez-Gomez- must demonstrate that reasonable jurists would find the assessment of the constitutional claims by this Court to be debatable or wrong. *Id.*

In light of the facts of this case, especially when considered against settled and controlling precedent of the Supreme Court and the Court of Appeals for the Sixth Circuit, reasonable jurists would not find the resolution of the constitutional issues that have been raised by Galvez-Gomez to be debatable or wrong. Therefore, the Court denies a certificate of appealability to Galvez-Gomez.

There having been no timely objections filed, the Court

(1) ACCEPTS the magistrate judge's Report and Recommendation (ECF #46);

(2) DENIES Defendant's Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. §2255 (ECF #35)

(3) DENIES a certificate of appealability.

SO ORDERED.

Dated: June 15, 2020

s/Paul D. Borman
Paul D. Borman
United States District Judge